

**GUIDELINES FOR THE DIVISION OF BUSINESS  
AMONG DISTRICT JUDGES**

**EASTERN DISTRICT**

**ADOPTED PURSUANT TO 28 U.S.C. § 137**

These rules are adopted for the internal management of the caseload of the court and shall not be deemed to vest any rights in litigants or their attorneys and shall be subject to such amendments from time to time as shall be approved by the court.

**50.1 Categories and Classification of Cases; Information on Cases and Parties**

(a) Categories of Cases.

Cases shall be divided into the following main categories:

(1) Civil.

(A) Regular.

(B) Multidistrict litigation.

(C) Patent.

(2) Criminal.

(3) Miscellaneous.

(b) Information Sheet.

The party filing the initial paper in a civil or criminal case shall complete and attach an information sheet. The information sheet shall be placed in the case file.

Where it appears to the Court that the filing party's reasons for joinder of parties are not apparent from the face of the complaint, the Clerk of Court is authorized to request a written explanation consistent with Federal Rule of Civil Procedure 19 and any other appropriate Federal Rule. The response of the filing party will be docketed and a copy forwarded to the assigned judicial officer.

(c) Disclosure of Interested Parties.

To enable judges and magistrates to evaluate possible disqualification or recusal, counsel for a private (nongovernmental) party shall submit at the time of initial pleading a certificate identifying any corporate parent, subsidiaries, or affiliates of that party.

(d) Long Island Cases.

- (1) A criminal case shall be designated a “Long Island case” if the crime was allegedly committed wholly or in substantial part in Nassau or Suffolk County.
- 2) A civil case shall be designated a Long Island case if:
  - a) the case has been removed to this Court from a New York State court located in Nassau or Suffolk County, or
  - b) in any other case,
    - i) a substantial part of the events or omissions giving rise to the claim or claims occurred in Nassau or Suffolk County, or
    - ii) a substantial part of the events or omissions giving rise to the claim or claims did not occur in the Eastern District of New York and the defendant (or a majority of the defendants if there is more than one) resides in Nassau or Suffolk County or, in an interpleader action, the claimant (or a majority of the claimants if there is more than one) resides in Nassau or Suffolk County.

For purposes of this rule, a corporation shall be considered a resident of the county in which it has the most significant contacts.

(3) As provided in 50.2(f) a party may move to designate a case as a Long Island case or to cancel such designation on the grounds that such action will serve the convenience of the parties and witnesses or is otherwise in the interests of justice.

(e) Miscellaneous Cases.

All matters that do not receive a civil or criminal docket number shall be given a miscellaneous docket number and assigned as provided in 50.5 of these rules.

[Amended: September 12<sup>th</sup>, 2014]

## **50.2 Assignment of Cases**

(a) Time of Assignment.

The clerk shall assign a civil case upon the filing of the initial pleading. In a criminal case after an indictment is returned or after an information (including a juvenile information under 18 U.S.C. § 5032) or a motion to transfer under 18 U.S.C. § 5032 has been filed, the United States Attorney shall refer the case to the clerk who shall then assign the case. The United States attorney shall arrange with the judge to whom the case is assigned, or if that judge is absent or unavailable as provided in 50.5, with the miscellaneous judge, to have the defendant arraigned and a plea entered as promptly as practicable.

(b) Random Selection Procedure.

All cases shall be randomly assigned by the clerk or his designee in public view in one of the clerk's offices in such a manner that each active judge shall receive as nearly as possible the same number of cases, except as provided in paragraph (h) Where a party or his counsel requests prior to selection that he or she be present at the selection, the clerk shall make reasonable efforts to comply with the request. In Brooklyn civil cases a magistrate judge shall be drawn at the same time and in the same manner as a judge. All Long Island civil cases shall be assigned to the Long Island magistrate judge. The parties to any Long Island case assigned to a Brooklyn judge may stipulate that the case be assigned to the Long Island magistrate judge, for pretrial purposes.

(c) Assignment of Civil Cases.

(1) There shall be separate Brooklyn and Long Island civil assignment wheels.

At least quarterly the Chief Judge shall fix the proportion of cases to be assigned to the Long Island courthouses so as to distribute the civil cases relatively equally among all the active judges.

(2) There shall be separate patent assignment wheels for district judges and magistrate judges. A district judge or magistrate judge not in the patent assignment wheel who received a new patent case by random selection from the civil assignment wheel may elect, within thirty (30) days of assignment for district judges and seven (7) days of assignment for magistrate judges, to direct reassignment of the case. A new district or magistrate judge, or both, will then be assigned by random selection from the appropriate patent assignment wheel(s).

(d) Assignment of Criminal Cases.

(1) There shall be a Brooklyn criminal and a Long Island criminal assignment wheel.

(2) There shall be a Brooklyn and Long Island criminal misdemeanor assignment wheels for the random assignment of these matters to a magistrate.

(e) Place of Trial.

Except in emergencies a case shall be tried at the place to which it has been assigned.

(f) Objection.

Any objection by a party to designation of a judge or to place of trial shall be made by letter or motion to the judge assigned

(1) in a criminal case, within fourteen (14) days from arraignment or from initial notice of appearance, whichever is earlier; or

(2) in a civil case, within the time allowed to respond to the complaint.

(g) Special Cases.

(1) The miscellaneous judge shall send all narcotics addict commitment cases involving "eligible individuals" as defined by 28 U.S.C. § 2901(g) to the clerk for assignment as provided in paragraph (b).

(2) *Pro se* applications or claims by persons in custody shall be filed without prepayment of fees upon receipt, prior to decision on their *in forma pauperis* petitions.

(3) Multidistrict litigation is to be assigned to the judge selected by the multidistrict litigation panel; subject to reassignment by the Chief Judge of the Eastern District of New York, according to the usual reassignment rules of the district, to adjust caseload distribution in the interests of justice.

(h) Chief Judge; Senior Judges; Temporarily Overloaded Judges; Notice of Removal from Wheel.

The chief judge and each senior judge shall indicate from time to time to the clerk the percentage of a full caseload that he or she elects to have assigned. The chief judge, with the consent of a judge, may remove that judge from any wheel temporarily to reduce the number of pending cases and prevent delay in the disposition of cases by a judge who is then overburdened by

cases or due to ill health. The chief judge shall return that judge to the wheel only on consent of the judge. The clerk shall upon request inform any attorney or party of the identity of judges whose names have been removed from a wheel.

(i) Visiting Judge.

The chief judge shall approve the assignment or transfer of cases to a visiting judge.

(j) Proceedings After Assignment.

All proceedings in a case after assignment shall be conducted by the assigned judge, except as provided by these guidelines.

(k) Recusal.

A judge or magistrate judge may recuse himself or herself at any time in accordance with U.S.C. § 455. This guideline takes precedence over any other guideline.

(l) Appeals-Assignment on Reversal or Remand.

(1) In a criminal case upon reversal of a judgment and a direction for retrial or resentencing, on receipt of the mandate of the appellate court the clerk shall randomly select a different judge to preside over the case. Notwithstanding this provision the chief judge may order the case assigned to the original presiding judge to avoid placing an excessive burden on another judge.

(2) In a civil case upon reversal the case shall remain assigned to the judge who was previously assigned, unless the chief judge or his designee orders otherwise.

[Amended: January 10<sup>th</sup>, 2012]

### 50.3.1 Related Civil Cases

(a) **“Related” Civil Case Defined.** A civil case is “related” to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge.

(b) **Civil Cases Not Deemed “Related”.** A civil case shall not be deemed “related” to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties.

(c) **Civil Cases Presumptively Not “Related”: Unless Both Cases Are Still Pending.**

Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be “related” unless both cases are still pending before the court.

(d) **Judicial Determination That Civil Cases Are “Related”.** Except for the cases described in the final sentence of paragraph (e), all civil cases shall be randomly assigned when they are filed. Other than the cases described in the final sentence of paragraph (e), civil cases shall not be deemed to be “related” for purposes of this guideline at the instance of any litigant or attorney unless and until there has been a determination by a judge of this court that the standard of paragraph (a) is met, i.e., that because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge. Any party may apply for such a determination by filing with the clerk a letter of no more than three single-spaced pages explaining why the standard of paragraph (a) is met and serving copies of the letter on all other parties. Such

an application must be made after the date when at least a majority of the defendants have been served with the complaint, but not more than 30 days after that date unless the judge passing on the application permits a later filing for good cause shown. Before making such an application, the applicant must confer in good faith with all other parties in an effort to reach an agreement on whether or not the case is “related”. After such an application is made, any other party may serve and file within seven (7) days a letter of no more than three single-spaced pages supporting or opposing the application. Any determination by a judge of this court that the standard of paragraph (a) is or is not met shall be made by a judge or judges designated by the chief judge, who shall not include the judge to whom the case has been randomly assigned or the judge to whom the case will be assigned if it is determined to be “related”.

**(e) Assignment of Related Cases.** Cases which have been judicially determined to be related shall be assigned by the clerk to the judge to whom was assigned the case with the lowest docket number in the series of related cases. The clerk shall advise the judge of such assignment of a related case. In the interest of judicial economy, the following categories of civil cases shall be deemed to be “related” without further order of the court: (1) all habeas corpus petitions filed by the same petitioner; (2) all pro se civil actions filed by the same individual; and (3) any other subject-matter category of cases where the chief judge finds that the standard of paragraph (a) is met.

**(f) No Vested Rights.** As stated in the Introduction to these Division of Business Rules, this rule is adopted for the internal management of the case load of the court and shall not be deemed to vest any rights in litigants or their attorneys and shall be subject to such amendments from time to time as shall be approved by the court. This rule shall not be deemed to prevent the reassignment of cases at the initiative of and by agreement of the judges involved.

[Amended: September 22, 2008]

### **50.3.2 Related Criminal Cases**

#### **(a) In General**

(1) For purposes of this rule, a “case” refers to a criminal proceeding commenced by indictment or information. It does not include wiretap applications, motions in connection with grand jury proceedings, or ex parte motions made outside of a proceeding commenced by indictment or information.

(2) All criminal cases shall be randomly assigned upon filing.

(3) This rule shall not be deemed to prevent the reassignment of cases at the initiative of and by agreement of the judges involved.

(4) As stated in the Introduction to these Division of Business Rules, this rule is adopted for the internal management of the case load of the court and shall not be deemed to vest any rights in litigants or their attorneys and shall be subject to such amendments from time to time as shall be approved by the court.

#### **(b) Relevant Considerations in Relating Cases**

(1) There shall be a presumption that one case is “related” to another when the facts of each arise out of the same charged criminal scheme(s), transaction(s), or event(s), even if different defendants are involved in each case.

(2) The presumption shall be overcome upon a determination by the relevant judges that reassignment would not achieve a significant savings of judicial resources or serve the interests of justice.

(3) In a case involving racketeering charges, the determination of whether that case should be related to another shall be made on the basis of the predicate acts charged, not the criminal enterprise.

(4) If a defendant has been convicted in more than one case and the sentences are pending before different judges, each of the pending sentences shall be imposed by a single judge determined by all of the relevant judges to be best suited to do so.

**(c) Obligation of the United States Attorney's Office**

(1) It is the affirmative obligation of the United States Attorney's Office ("USAO") to give notice to all relevant judges whenever it appears that one case may be presumptively related to another pursuant to Section (b)(1). Such notice shall be by letter and filed together with the indictment, information or Federal Criminal Rule 7(b) motion and addressed to each of the judges concerned. The letter shall set forth the facts relevant to deciding whether the indictment or information should be related to another case. The letter shall in addition state clearly whether its purpose is solely to provide notice to the Court under this rule, or whether the USAO seeks reassignment.

(2) The USAO may move for leave to file a notice required by the rule ex parte and under seal for good cause shown. The USAO shall promptly move to unseal the notice once the need for ex parte and sealed filing no longer exists. Absent leave of court, the USAO shall publicly file a notice indicating that an ex parte sealed filing pursuant to this rule is being submitted.

(3) These obligations are continuing. The USAO should endeavor to provide notice that could avoid having two or more judges sentence different defendants or the same defendant in related cases.

**(d) Input from Defendants**

Any defendant may request reassignment to a judge whom the defendant contends has a case that is presumptively related pursuant to Section (b)(1). In addition, any defendant may request that a case previously assigned to a judge as related be reassigned to the original

judge on the ground that it was not properly related. Such requests shall be made by filed letter in both cases, addressed to both judges.

**(e) Joint Application for Reassignment**

Nothing in this rule shall preclude the USAO and defendant from jointly seeking reassignment to another judge in the interests of justice or on the grounds that a significant savings of judicial resources would be achieved.

**50.4 Reassignment of Cases**

No case shall be reassigned except in the interest of justice and the efficient disposition of the business of the court. The chief judge may at any time, with the consent of the judges involved, reassign individual cases. Reassignment of cases to accommodate changes in the complement of judges shall be made in accordance with the order of the Board of Judges.

**50.5 Miscellaneous Judge**

**(a) Duties and Functions of the Miscellaneous Judge**

(1) All matters, including those requiring immediate action or brought as special proceedings which cannot be assigned in the ordinary course, shall be randomly assigned pursuant to the procedures set forth in 50.2(b) of these rules.

(2) The miscellaneous judge shall hear and determine matters requiring immediate action in cases already assigned to any judge of the court, if that judge is unavailable or otherwise unable to hear the matter, only for such immediate emergency action. The matter or case will remain assigned to the judge originally selected at random.

(3) The miscellaneous judge shall preside over admissions to the bar and naturalization proceedings.

**(b) Duties and Functions of the Duty Magistrate Judge**

- (1) Preside over the arraignment part;
- (2) Empanel grand juries, receive indictments and enter presentment orders, refer criminal cases to the clerk for assignment pursuant to 50.2, and discharge grand juries;
- (3) Decide requests to be excused from service on the grand and petit juries; and
- (4) Preside over admissions to the bar and naturalization proceedings when

requested.

(c) Limitation of Duties in Matters Already Assigned.

The miscellaneous judge shall dispose of matters under paragraph (a)(2) only to the extent necessary and shall continue the case before the assigned judge. All applications for emergency action or relief shall disclose any prior application to a judge for the same or related relief and the outcome thereof.

## 50.6 Calendars

(a) Numbers; Order of Cases.

The docket number of each case shall be the calendar number. No note of issue shall be required to place the case on the calendar. Each judge shall dispose of cases assigned to him or her as required by law and the efficient administration of justice.

(b) Preferences.

Each judge shall schedule cases appearing on his or her docket in such order as seems just and appropriate, giving preference to the processing and disposition of the following:

- (1) *habeas corpus* petitions and motions attacking a federal sentence;
- (2) Proceedings involving recalcitrant witnesses before federal courts or grand juries, under 28 U.S.C. § 1846;

- (3) Actions for temporary or preliminary injunctive relief; and
- (4) Any other action if good cause is shown.

(c) Publication of Calendars.

Each court day the clerk shall post on bulletin boards throughout the courthouse and provide to legal newspapers for publication copies of the judges' calendars.

### **50.7 Conference**

The judge assigned to any case may direct the attorneys to appear to discuss the case informally, to entertain oral motions, to discuss settlement, or to set a schedule for the events in the case, including completion of discovery, pretrial and trial.